

REMARKS

Claims 1-20, 22, and 24-30 were previously pending, of which claims 6, 10, 12-14, 20, 30, and 31 had been withdrawn for being directed to a non-elected species. Currently claims 5, 8, 19, and 25 have been canceled without prejudice. New claims 34-37 have been added. Reconsideration of claims 1-4, 7, 9, 11, 15-18, 21-23, 27-29, and 32-37 is respectfully requested in light of the above amendments and the following remarks.

§102 Rejections

U.S. Patent No. 7,048,764 to Ferree

Claims 1-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,048,764 to Ferree ("Ferree").

The PTO provides in MPEP § 2131 that

"[t]o anticipate a claim, the reference must teach every element of the claim...."

Therefore, to sustain the rejection of these claims Ferree must teach all of the claimed elements of each claim. However, Ferree fails to disclose all of the claimed elements of independent claim 1 and, therefore, its dependent claims 2-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33.

In particular, Ferree at least fails to teach the following elements of claim 1:

“a center member adapted for placement at least partially between the first member and the second member, the center member including:

a convex third surface for movably mating with the concave recess defined by the first curve of the first surface, the third surface having a third radius of curvature substantially similar to the first radius of curvature,

a fourth surface having a concave central portion and a convex outer portion extending substantially around the concave central portion, the concave central portion for movably mating with the convex projection defined by the second curve of the second surface, the concave central portion having a fourth radius of curvature substantially similar to the second radius of curvature.”

As shown in Figs.1B and 1C of Ferree (below), the spacer component 114 does not include “a concave central portion and a convex outer portion extending substantially around the concave central portion,” as required by claim 1. Thus, for at least this reason Ferree fails to teach all of the claimed elements of independent claim 1. Therefore, Applicants respectfully request that the §102 rejections of claims 1-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33 be withdrawn.

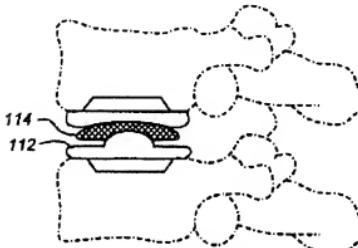


Fig. 1B



Fig. 1C

U.S. Patent Application Publication 2006/0116768 to Krueger

Claims 1-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33 were also rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication 2006/0116768 to Krueger (“Krueger”). To sustain the rejection of these claims Krueger must teach all of the claimed elements of each claim. However, Krueger fails to disclose all of the claimed elements of independent claim 1 and, therefore, its dependent claims 2-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33.

Krueger at least fails to teach “a first member for engaging a first vertebral body, the first member comprising a first surface with a first curve defining a concave recess, the first curve having a first radius of curvature” and “a second member for engaging a second vertebral body, the second member comprising a second surface with a second curve defining a convex projection, the second curve having a second radius of curvature smaller than the first radius of curvature” as recited by claim 1.

Krueger also at least fails to teach the following elements of claim 1:

“a center member adapted for placement at least partially between the first member and the second member, the center member including:

 a convex third surface for movably mating with the concave recess defined by the first curve of the first surface, the third surface having a third radius of curvature substantially similar to the first radius of curvature,

 a fourth surface having a concave central portion and a convex outer portion extending substantially around the concave central portion, the concave central portion for movably mating with the convex projection defined by the second curve of the second surface, the concave central portion having a fourth radius of curvature substantially similar to the second radius of curvature.”

Thus, for at least these reasons Krueger fails to teach all of the claimed elements of independent claim 1. Therefore, Applicants respectfully request that the §102 rejections of claims 1-4, 7, 9, 11, 15-18, 21-23, 27-29, 32, and 33 be withdrawn.

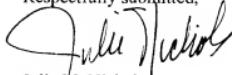
New Claims 34-37

New claims 34-37 depend from and further limit independent claim 1 and, therefore, are allowable for at least the same reasons.

CONCLUSION

As a result of the foregoing, it is respectfully asserted that all of the pending claims are in condition for allowance. Should the Examiner deem that any further amendment is necessary to place this application in condition for allowance, the Examiner is invited to contact the undersigned attorney at the telephone number noted below.

Respectfully submitted,



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